

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 30 OF 2019

1. Sharda Tukaram Harmalkar,
(since deceased)
Represented through her L.R.'s.
- 1.a. Mr. Tulsidas Tukaram Harmalkar,
son of Late Tukaram Harmalkar,
age 53 years, married,
Business and his wife;
- 1.b. Mrs. Supriya Tulsidas Harmalkar,
wife of Tulsidas Harmalkar,
age 48 years, married, housewife,
both r/o Dabolwada, Anjuna,
Chapora, Bardez, Goa.
- 1.c. Mrs. Sushma Chandan Naik,
widow of Late Chandan Naik,
age 51 years, housewife.
- 1.d. Mr. Ramanand Chandan Naik,
age 25 years,
son of Late Chandan Naik,
both r/o Teen Maad, Maina,
Siolim, Bardez, Goa.
- 1.e. Mr. Sharad Gajanan Wagh,
son of Mr. Chandan Wagh,
age 52 years, Married.
Driver, r/o H.No.540/7,

Teen Maad, Maina, Siolim,
Bardez – Goa.

2. Mrs. Hema Tukaram Harmalkar,
alias Hema Shrad Wagh,
age 43 years, married,
r/o Teen Maad, Maina, Siolim,
Bardez – Goa.

... Appellants.

Versus

Mr. Meghasham Venkatesh
Madgaonkar,
Age 46 years, Agriculturist,
R/o H.No. 724, Maina,
Patto, Siolim, Bardez – Goa.

... Respondents

Mr. Amay Arjun Phadte, Advocate for the Appellants.

Mr. Jagannath Jayant Mulgaonkar, Advocate for Respondent.

Coram : Prithviraj K. Chavan,J.

Date : 02th July 2019.

JUDGMENT

Heard.

2. Admit.

By this second appeal, the appellants who are original plaintiffs have impugned the judgment of the lower Appellate Court. The lower Appellate Court has dismissed their appeal which arose from the Trial

Court's judgment in Regular Civil Suit No. 65/1997/D which was decreed on 14.08.2009.

2. The suit of the plaintiff was simplicitor for permanent injunction. In order to appreciate the controversy, it would be essential to have a brief resume of the facts.

3. Appellants/plaintiffs are residents of Siolim, Bardez taluka. A property known as "Chital" surveyed under No. 249/2, admeasuring 50500 sq. mts. exists in the said village which is divided into plots A, B, C, D and E. Plaintiff/appellant Sharda claims to be the wife of late Tukaram Raghoba Harmalkar who was a tenant of plots A and B which shall be referred to as suit plots.

4. Plot A admeasures 6482 sq. mts. Towards its north, there is plot No. C. The southern property is surveyed under No. 254. On the eastern side there is a road and western side plot B which admeasures 2480 sq. mts.

5. Plaintiffs' contention is that there is a house in plot A bearing No. 540/7 which belongs to the plaintiffs. There are three mango trees out of which one is Mankurad, five cashew trees, a well and remaining portion a paddy cultivation land. In plot B, there are twenty four

coconut trees, sixteen mango saplings, cashew trees, one jackfruit tree and other trees.

6. It is contended that the defendants have no right, title and interest in plots A and B, however, they were trying to pluck mangoes existing in plot A. The plaintiffs filed a complaint with the police and ultimately filed a suit.

7. The defendant in the written statement has denied that the plaintiff is the wife of late Tukaram Harmalkar. According to the defendant, name of Tukaram Harmalkar has been wrongly recorded in the survey records. Rest of the averments in the plaint came to be denied by the defendant.

8. It is the contention of the defendant that the mango trees in plot C are in his possession as tenant and she has always been plucking the mangoes as she is entitled to do so. It is contended that since there is no cause of action to file suit and since plaintiff has no locus standi, she prayed for dismissal of the same.

9. After framing necessary issues and after recording evidence of the witnesses, the Trial Court decreed the suit thereby restraining the defendants or any one claiming through her from interfering with the

possession of the plaintiffs in respect of the suit property. While decreeing the suit, it is observed by the learned Trial Court that there exists name of the husband of plaintiff No.1 as tenant in respect of plot A and B of property surveyed under No. 249/2, his name is recorded as a tenant in Form I & XIV which is at Exhibit C-20. It is observed by the learned Trial Court that survey entry has a presumptive value and presumed to be correct unless rebutted.

10. In an appeal before the learned District Judge, it is brought to my notice on behalf of the respondents/defendants that late Tukaram Harmalkar was not the husband of plaintiff No.1 and father of plaintiff No.2 in support of which, the defendants have referred to Special Civil Suit No. 267/1989/A, filed in the Court of Civil Judge, Senior Division, Mapusa by one Krishna Rama Chopdekar and Tukaram Raghoba Harmalkar against the defendant wherein the plaintiffs made an application to bring them on record as legal heirs of deceased Tukaram Raghoba Harmalkar. In the said application, it was contended that plaintiff No. 1 herein was wife of Tukaram Harmalkar and plaintiff No. 2 was the daughter. The learned Civil Judge, Senior Division, after holding an inquiry, dismissed the said application by order dated 23.06.1993 holding that plaintiff No.1 herein is not the wife of late Tukaram Harmalkar.

11. Thus, the plaintiffs/appellants have not tendered any substantive documentary evidence to buttress the claim that the deceased Tukaram Harmalkar was the husband of appellant/plaintiff No.1. The birth certificate of plaintiff No. 2 which is marked X for identification has also not been proved as per law of evidence and therefore, it is held by the lower Appellate Court that plaintiff has failed to show that she is the wife of late Tukaram Harmalkar and plaintiff No.2 is his daughter. The plaintiff had only tendered a photo copy of the judgment dated 14.04.1970 which is marked X for identification. She has not adduced any evidence to substantiate the fact that in fact Tukaram was declared as tenant of the suit property.

12. It is clear from the impugned judgment that there is absolutely no substantive question of law involved in the second appeal. Both the courts below have appreciated the evidence and the view taken by the lower Appellate Court cannot be said to be perverse or against the settled legal principles.

13. It is not the case that the lower Appellate Court has ignored material evidence or acted on no evidence.

14. It is also not apparent that the lower Appellate Court has drawn wrong inferences from proved facts by applying the law

erroneously or the Court has wrongly cast the burden of proof.

15. I therefore, find no substance in the submissions made by the appellants. Consequently, there is no substantial question of law involved and therefore the appeal needs to be dismissed and hence stands dismissed.

16. Now, to the order:

O R D E R

The Second Appeal is dismissed. However, parties to bear their respective costs.

PRITHVIRAJ K. CHAVAN, J.